

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter

CC Docket No. 95-116

Telephone Number Portability

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COMMENTS OF SBC COMMUNICATIONS INC. TO  
FURTHER NOTICE OF PROPOSED RULEMAKING

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## SUMMARY

Congress and the Commission have agreed that number portability fosters competition by allowing a consumer to select among service providers without requiring a change of telephone numbers. Congress recognized, and this Commission must agree, that implementation of number portability will be costly. Accordingly, the FNPRM addresses the three critical aspects of number portability implementation: (1) identification of the costs associated with the various possible number portability arrangements, (2) the manner in which those costs may be allocated, and (3) possible methods by which those costs can be recovered.

As a preliminary matter, SBC has no material objection to the Commission's selected division of costs into three cost types.

Section 251(e)(2) requires unambiguously that "the cost of establishing telecommunications . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." As the Commission pointed out in the FNPRM, most parties generally contend that all telecommunications carriers and their customers should bear the cost of number portability because they all benefit from the service and price competition stimulated by portability. This is the correct conclusion not only from a policy standpoint, but from a statutory construction standpoint, as well: had Congress intended anything less than "all" telecommunications carriers to fund number portability, it could have narrowed the contributing class through specific legislative language.

As well, the Commission has requested comment on the proper method of allocating number portability costs among all carriers. At the outset, the Commission must acknowledge that both the letter and the intent of the 1996 Act is that "the Commission [should] establish

regulations requiring full compensation to the LEC for costs of providing services related to . . . number portability." The Commission points out that for purposes of number portability cost recovery, a competitively neutral cost recovery mechanism is required by the 1996 Act. Drawing upon the Report and Order, the FNPRM tentatively concludes that:

First, a "competitively neutral" cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber.... and [Second,] a "competitively neutral" cost recovery mechanism ... should not have a disparate effect on the ability of competing service providers to earn normal returns on their investment... As in the case of currently available number portability measures, we believe that these principles equally apply to the allocation of costs incurred due to the implementation of long-term number portability. We, therefore, tentatively conclude that any long-term cost recovery method should comply with these principles.

In response to the establishment of these standards, the Commission opines that there is more than one way to achieve them, although in at least one context, the Commission favors allocation among carriers based upon gross revenues, less payments to other carriers. To eliminate the distortions inherent in revenue-based methods of cost allocation, while meeting the Commission's standards for "competitive neutrality," SBC proposes that allocation should be based upon nationwide "elemental access lines" ("EALs") and recovery through a cost fund linked to a mandatory, averaged, and uniform end-user charge. This approach takes into account the various telecommunications product submarkets and customer-perceived uses of the local exchange line associated with the potentially ported number by dividing it into presubscribed "sub-elements": (1) local or telephone exchange service, (2) intraLATA toll service, and (3) interLATA toll service. This method acknowledges the three types of access line applications available to customers and meets the possibility that each of those applications may be provided by a separate carrier after full implementation of the 1996 Act.

The NANC, or its designee, should be responsible for administering a number portability cost fund (the "fund administrator"). The fund administrator will accumulate all nationwide Type 1 and Type 2 costs in order to develop a mandatory, uniform national number portability end-user charge. All nationwide Type 1 and Type 2 number portability costs would be captured in a cost fund and divided by the national total number of EALs to determine an EAL charge per end user for each service. The resulting end-user charge per EAL would be federally mandated and assessed by all carriers on a uniform, mandatory, monthly basis to all end-user customers. Revenues from the charge would be collected by the carriers, returned to the fund, and disbursed to all carriers on the basis of reported and validated costs.

Without a mandatory, uniform charge levied on all users, customers could be incented to switch carriers based on the existence or non-existence of a number portability charge. Not only would this distinction provide certain carriers with a competitive advantage, it could potentially fail to meet the Commission's test for competitive neutrality.

Therefore, the Commission must require that all number portability costs be both allocated among all telecommunications carriers and recovered from end users on a competitively neutral basis. This requires that the Commission mandate a common fund and a uniform charge to end users of all telecommunications carriers.

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CC Docket No. 95-116

**COMMENTS OF SBC COMMUNICATIONS INC. TO FURTHER NOTICE OF  
PROPOSED RULEMAKING**

SBC Communications Inc. ("SBC"), by its attorneys and on behalf of its subsidiaries, Southwestern Bell Communications Services, Inc. ("SBCS"), Southwestern Bell Telephone Company ("SWBT"), and Southwestern Bell Mobile Systems ("SBMS") files these comments in response to the First Report and Order and Further Notice of Proposed Rulemaking released by the Commission on July 2, 1996 (the "FNPRM").<sup>1</sup>

**I. INTRODUCTION**

The Commission has analyzed the benefits of number portability<sup>2</sup> to consumers in concert with the will of Congress and has agreed that number portability fosters

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<sup>1</sup> In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, CC Docket 95-116 (July 2, 1996).

<sup>2</sup> "Number portability" means "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. Section 153(30).

competition by allowing consumer to retain telephone numbers when switching between new service providers.<sup>3</sup> Congress recognized, however, that number portability is not obtainable without substantial cost. Accordingly, this FNPRM addresses three crucial aspects of number portability implementation: (1) identification of the costs associated with the various possible number portability architectural arrangements, (2) the manner in which those costs may be allocated, and (3) possible methods by which those costs can be recovered.

The technological method of number portability ultimately implemented will permit all telecommunications carriers that originate, carry, or terminate calls to route those calls to their proper ported destinations. Under the current methodologies most widely supported by the industry, all telecommunications carriers will necessarily participate in a common regional or national database, the service management system (“SMS”)—either directly through the use of their own storage and retrieval devices or indirectly by purchasing such services from another service provider that has installed number portability database routing capabilities.

As a framework for determining the treatment of costs associated with these methodologies, Congress established the requirement for number portability with a provision that the costs incurred to implement national number portability, whether they be shared costs in regionally administered databases or individually-incurred network modifications, be borne by all telecommunications carriers on a competitively neutral basis.<sup>4</sup>

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<sup>3</sup> See FNPRM at ¶¶2, 26-31.

<sup>4</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151, et seq., Section 251(e)(2)(the “1996 Act”) (all citations to



The charge to this Commission is unambiguous. Based upon the foregoing Congressional decisions, SBC presents its response to certain of the issues raised in the FNPRM and recommendations on how to meet Congress' requirements.

## **II. DISCUSSION**

### **A. DEFINING "ALL TELECOMMUNICATIONS CARRIERS" AND THE RECOVERY OF NUMBER PORTABILITY COSTS**

The Commission has requested comment on the meaning of the statutory language "all telecommunications carriers" as that term is used in Section 251 (e)(2) of the 1996 Act.<sup>5</sup> As the Commission pointed out in the FNPRM, most parties generally contend that all telecommunications carriers and their customers should bear the cost of number portability because they all benefit from the service and price competition stimulated by portability.<sup>6</sup>

The Communications Act of 1934 ("Communications Act"), as amended by the Telecommunications Act of 1996 ("1996 Act"), defines "telecommunications carrier" as any "provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226)." 47 U.S.C. §153(44). The term "telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." *Id.* at Section 153(46). Finally, "telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the

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be the 1996 Act will be to the 1996 as it will be codified in the United States Code). The 1996 Act amended the Communications Act of 1934 (the "Communications Act").

<sup>5</sup> FNPRM at ¶ 209.

<sup>6</sup> FNPRM at ¶ 202.

form or content of the information as sent and received.” Id. at Section 153(43).

Section 251(e)(2) requires, in pertinent part, that “the cost of establishing telecommunications . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.” The unambiguous meaning of this section is that “all telecommunications carriers” must fund the implementation of number portability as defined in Section 153(30).

Where Congress intended in the 1996 Act or the Communications Act to apply their provisions to a subgroup of “all telecommunications carriers,” it was careful to apply specifically defined terms to those requirements. In both Acts, where necessary and appropriate, Congress plainly defined subgroups of the class “all telecommunications carriers” by precisely designating those constituent subgroups as “Bell operating company,” “common carrier,” “local exchange carrier,” “rural telephone company,” “eligible telecommunications carriers,” “commercial mobile service” provider,” or “incumbent local exchange carrier.”<sup>7</sup> Therefore, had Congress intended that anything less than “all” telecommunications carriers should fund number portability, it clearly had the capacity to narrow the contributing class through specific legislation.

The Commission opines that any long-term method of number portability technology should not “impose new or different obligations on carriers and customers that do not benefit from service provider portability.”<sup>8</sup> However, the unambiguous intent of the 1996 Act is that “the Commission [should] establish regulations requiring full compensation to the LEC for costs of providing services related to . . . number

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<sup>7</sup> See 47 U.S.C. §§153(4),(10),(26),(37), 214(e), 332, 252(h)(1).

<sup>8</sup> FNPRM at ¶59.

portability.” In the Conference Report, Congress specified that “[t]he costs for numbering administration and number portability shall be borne by all providers on a competitively neutral basis.”<sup>9</sup> Moreover, having the costs of number portability allocated to “all telecommunications carriers” is appropriate from policy and practical standpoints. From the standpoint of avoiding the imposition of costs upon carriers not needing to upgrade their equipment or subscribe to database capabilities that are not currently needed, the Commission has the correct focus; no carrier should be required to incur the costs necessary to port numbers until such time as that capability is competitively needed.

However, from a cost recovery standpoint, the Commission’s position is incorrect; all carriers must pay for number portability. The Commission points out that customers of all telecommunications carriers will benefit from competition enhanced by number portability. Recognizing that the local routing number (“LRN”) method of portability (with or without an ancillary query-on-release option) is likely to be adopted in an N-1 query configuration, all carriers will be required to utilize SMS and service control point (“SCP”) databases in order to complete some, if not most, of their calls, whether or not these calls are completely within the ported area. All telecommunications carriers that originate or carry calls that terminate to ported customers must have the ability to route those calls.

Congress also recognized that all customers in all areas will ultimately benefit from number portability, and all costs are to be borne accordingly; Congress has made that value judgment. Therefore, the cost of number portability must therefore be allocated to

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<sup>9</sup>See Joint Statement of Managers, S.Conf. Rep. No. 104-230, 104th Cong., 2d Sess., Preamble (1996)(Joint Explanatory Statement) at 121 (House Amendment) and 122 (Conference Report).

“all telecommunications carriers” on a nationwide basis.

B. COMPETITIVE NEUTRALITY OF ALLOCATION AND RECOVERY MECHANISMS

1. THE COMMISSION’S CRITERIA

The Commission points out that for purposes of number portability cost recovery, a competitively neutral cost allocation and recovery mechanism is required by the 1996

Act. Drawing upon the Report and Order, the FNPRM tentatively concludes that:

First, a “competitively neutral” cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber.... and [Second,] a “competitively neutral” cost recovery mechanism ... should not have a disparate effect on the ability of competing service providers to earn normal returns on their investment... As in the case of currently available number portability measures, we believe that these principles equally apply to the allocation of costs incurred due to the implementation of long-term number portability. We, therefore, tentatively conclude that any long-term cost recovery method should comply with these principles.<sup>10</sup>

2. REVENUES ARE NOT THE BEST METHOD OF ALLOCATING NUMBER PORTABILITY COSTS

Allocation of number portability costs on the basis of revenues, whether gross, gross minus payments to other carriers, retail, or other “netted” figures, is not the best method of measuring a carrier’s proper contribution to cost recovery. Allocation on this basis is subject to distortion and to subjective decisions as to the relative burden that should be borne by all telecommunications carriers. While superficially, gross-revenues minus payments to other carriers appears somewhat equitable to some carriers, it is not competitively neutral in that it disadvantages LECs and advantages IXC’s, even though IXC’s are just as dependent on the number portability mechanisms as LECs. Although

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<sup>10</sup>Report and Order at ¶¶132, 134; FNPRM at ¶210.

appearing more equitable by comparison to gross revenues less charges to other carriers, recovery based upon retail revenues is largely subject to a judgment as to the relative distribution of costs.

**C. ALLOCATION BY “ELEMENTAL ACCESS LINES” BETTER  
MEETS THE COMMISSION’S CRITERIA**

To eliminate the distortions inherent in the Commission’s proposed methods of cost allocation based upon revenues, while meeting its standards for “competitive neutrality,”<sup>11</sup> SBC advocates allocation based upon nationwide “elemental access lines” (“EALs”) and recovery through a cost fund linked to a mandatory, averaged, and uniform end-user charge. This approach, as explained further below, is the most competitively neutral mechanism and would take into account the various telecommunications submarkets and customer-perceived uses of the local exchange line associated with the potentially ported number by dividing it into presubscribed “sub-elements.” Access lines would be counted by “element,” indicating their use in three different types of applications: (1) local exchange service, (2) intraLATA toll service, and (3) interLATA toll service, each of which may have a separate carrier after full implementation of the

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<sup>11</sup> In discussing the competitively neutral allocation of costs across all telecommunications carriers, the Commission begins down the correct path in stating that:

allocating currently available number portability costs based on active telephone numbers results in approximately equal per-customer costs to each carrier. We also believe that assessing cost on a per-telephone number basis should give no carrier an advantage, relative to its competitors. An alternative mechanism that would also satisfy our competitive neutrality requirement would be to recover currently available number portability costs from all carriers, including local exchange, interexchange, and CMRS carriers, based on their relative number of presubscribed customers.

1996 Act .

The total number of EALs includes, therefore, the sum of local exchange access lines (including wireline and wireless), intraLATA toll presubscribed access lines, and interLATA toll presubscribed access lines. Under this mechanism, a carrier may be obligated for one, two, or three EALs depending on what services that carrier provides. The allocation of number portability cost across EALs can then be translated to derive a carrier's assessment.<sup>12</sup>

Today, at least in SBC's service areas, most of the local exchange EALs are "presubscribed" to incumbent local exchange carriers ("ILECs"). Likewise, most intraLATA toll is carried by ILECs, so most intraLATA toll EALs will, at least initially, be attributable to ILECs. InterLATA toll EALs are presubscribed to interexchange carriers. Assuming this distribution, ILECs currently account for roughly two-thirds of the described EALs, with interexchange carriers and CMRS providers accounting for the remainder.<sup>13</sup> Over time, it may be expected that the allocation of EALs will shift with the ebb and flow of competitive forces among ILECs, interexchange carriers, and competitive

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<sup>12</sup>As set forth below, this assessment would be recovered by element from each telecommunications carrier's end-user customers on a mandatory and uniform basis and remitted to a neutral, third-party administrator. See SBC's proposed mechanism, supra.

<sup>13</sup>Ordinarily, there will be two EALs associated with a CMRS telephone number, rather than the three associated with a landline, 2-PIC telephone number: (1) a "local" EAL, and (2) and an "interexchange" or "non-local" EAL (i.e., for calls terminating outside of the CMRS provider's service area). Although not all CMRS providers permit presubscription, all CMRS customers should be allocated two EALs, regardless of whether their interexchange traffic is presubscribed to an IXC or carried by their CMRS provider. This methodology is consistent with the "regulatory symmetry" goals of the Omnibus Budget Reconciliation Act of 1993 and does not penalize those CMRS providers that have chosen to continue to offer presubscription.

local exchange carriers, which may include the BOCs' separated affiliate interexchange carriers.

For example, depending upon a carrier's ability to convince a customer to purchase its "EAL services," the carrier will derive less or more benefit and will be allocated less or more of the number portability costs. Many small carriers, such as new entrant competitive local exchange carriers ("CLECs"), may have only one or two allocated EALs per customer as they enter the market. Others, such as large interexchange carrier ("IXC") CLECs that capture three "presubscribable" services, would be allocated a full and fair share of number portability costs for those customers.

#### D. RECOVERY OF ALLOCATED COSTS

The Commission correctly points out that the 1996 Act is silent on telecommunications carriers' recovery of number portability costs from their own customers. If the costs are allocated according to EALs as recommended by SBC, the process would be relatively simple and easily administered and would permit such recovery without differentiating between the incremental cost of an incumbent who keeps a customer, or the new carrier who captures a customer.<sup>14</sup> It is also relatively easy to recover both Type 1 and Type 2 costs<sup>15</sup> using the following approach proposed by SBC.

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<sup>14</sup>Although SBC uses the Commission's standards for competitive neutrality in this analysis, it does not advocate the use of the Commission's standard.

<sup>15</sup>SBC concurs with the definitions of Type 1 and Type 2 costs as proposed by the Commission in the Further Notice. SBC also concurs with the Commission's tentative conclusion that Type 3 costs should not be recovered as part of number portability.

## 1. OVERVIEW

All nationwide Type 1 and Type 2 costs incurred in the implementation of number portability should be reported to a cost fund. The total costs in the fund will be divided by the total number of EALs to determine an EAL charge per end user for each service. The resulting end-user charge will be federally mandated and assessed on a monthly basis to all end-user customers. Carriers should not be given the option to recover this charge through other means. Revenues from the charge will be collected by the carriers, returned to the fund and disbursed to all carriers on the basis of reported (and validated) costs.

## 2. TYPE 1 COSTS

The local number portability administrator(s) (“LNPA”) will be established by the North American Numbering Council (“NANC”). The LNPA will be responsible for designing, developing and implementing all aspects of the SMS to support number portability. All costs reasonably incurred by the LNPA (including nonrecurring and recurring) will be classified as Type 1 costs and reported to the NANC for inclusion in the number portability cost fund.

## 3. TYPE 2 COSTS

Each carrier will initially report a forecast<sup>16</sup> for Type 2 number portability costs and provide appropriate support materials to the NANC. Forecasts submitted by the carriers will be reviewed and verified by the NANC based on a set of predetermined criteria and conditions (also determined by the NANC). This will ensure that only valid Type 2 costs are included in the number portability cost fund.

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<sup>16</sup>A true-up to actual costs can occur later.



#### 4. AGGREGATION OF COSTS AND ADMINISTRATION OF THE COST FUND

The NANC, or its designee, will be responsible for administering the number portability cost fund (the “fund administrator”). The fund administrator will accumulate all nationwide Type 1 and Type 2 costs in order to develop a mandatory, uniform national number portability end-user charge (See infra).

Administration responsibilities include: (1) determining the validity of all costs placed in the fund assure that they are appropriate number portability Type 1 or Type 2 costs; (2) verifying the accumulation of number portability funds and disbursement to the carriers; (3) establishing the actual amount of the number portability end-user charge; (4) assuring all carriers charge their customers the amount established via this process; (5) determining and updating a count of the nationwide total EALs; (6) periodically adjusting the end-user charge on the basis of changing costs, or revised EALs; and (7) periodically providing reports to the Commission, as necessary. The NANC will have oversight and control over all the activities and responsibilities of the fund administrator.

#### 5. COSTS INCURRED BY FIRMS WHO DO NOT HAVE EALS ARE NOT ELIGIBLE FOR THE FUND

In addition to telecommunications carriers, other firms may have number portability type costs. For example, some carriers may wish to purchase number portability data queries from other entities. It is possible that noncarriers may wish to develop a service offering to meet this demand. Since these providers are not acting as telecommunications carriers, the costs they incur to deploy their systems would not be eligible to be funded. In addition, uploads, downloads and other activities they require of the LNPA should be paid for on a usage sensitive basis.

## 6. DETERMINING THE NUMBER PORTABILITY END-USER CHARGE

The fund administrator will determine the number portability end-user charge by:

- (1) determining total number portability costs by adding the Type 1 and Type 2 costs from all carriers (the "Total Costs").<sup>17</sup>
- (2) determining the number portability end-user charge by dividing the Total Costs by the nationwide total number of EALs.<sup>18</sup>

An explicit end-user charge will be mandated by the Commission so that all carriers are required to charge their customers for the recovery of number portability costs.<sup>19</sup>

## 7. COLLECTION OF NUMBER PORTABILITY REVENUES

Carriers will charge their customers one or more number portability end-user charges based on the number of EALs they provide. For example, a customer receiving local exchange, intraLATA, and interLATA from a single carrier will be charged on the basis of three EALs. Or, a customer receiving local exchange and intraLATA

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<sup>17</sup>The total number portability costs to be recovered in any single year will be comprised of Type 1 and Type 2 expenses and capital costs; the capital costs will be amortized over a reasonable period of time as determined by the NANC. The amortization period selected should balance the need for economic recovery and the need for the number portability charge to be as minimal as possible. The number portability end-user charge would decrease significantly in the year following the end of the amortization period for the initial capital costs associated with number portability.

<sup>18</sup>Preliminary studies conducted by SBC indicate that an EAL charge would be significantly less than \$1.00 per month during the period that amortized capital costs are the greatest (e.g., years 1 through 5). After the initial capital costs have been amortized (likely beginning in year 6), the monthly EAL charge could be reduced significantly--to below 20 cents per month.

<sup>19</sup>Carriers not deploying number portability hardware can purchase number portability dips from other carriers for a query charge.

interexchange from one carrier and interLATA interexchange from another carrier will be charged on the basis of two EALs from the first carrier and on the basis of one EAL from the second carrier. Or, a customer receiving “local” CMRS and “non-local” (or interexchange) CMRS service from the same carrier will be charged on the basis of two EALs. Therefore, each carrier remits its proportion of number portability revenues based upon the EAL services it provides to the customers benefitting from number portability.

The revenues that carriers collect from the number portability end-user charge will be remitted on a monthly basis to the fund administrator for subsequent distribution to the carriers.

#### **8. DISBURSEMENT OF REVENUES TO CARRIERS**

All revenues received from the carriers will be distributed by the fund administrator to: (1) the LNPA(s) on the basis of actual Type 1 costs reported to the cost fund, and (2) the carriers on the basis of actual Type 2 costs reported to the cost fund. By distributing end-user charge revenues on the basis of actual costs, in lieu of an arbitrary allocator (revenues, access lines, number of customers, etc.), all carriers and LNPAs will be assured of recovering their reported and approved costs and no carrier or LNPA will be able to recover more than those costs.

#### **E. THE COMPETITIVELY NEUTRAL PROVISIONS OF THE ACT REQUIRE THAT NUMBER PORTABILITY COSTS BE AGGREGATED AND RECOVERY LINKED TO A UNIFORM MANDATORY CHARGE LEVIED BY ALL CARRIERS**

The Act requires that “number portability costs shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.” Further, the Commission has determined that number portability costs must not give any carrier an incremental cost advantage or interfere with its ability to earn a

normal return. To meet these requirements, number portability costs must be aggregated and all carriers must participate in the fund. The true measure of competitive neutrality will be made by the marketplace and will be based on the customer's perception of overall service value. Without aggregation, the incremental cost of number portability will necessarily vary by carrier, thus failing the Commission's first test for competitive neutrality.

In addition, recovery of these aggregated costs must be linked to a mandatory, uniform charge levied by all carriers. Without a mandatory, uniform charge levied on all users, customers could be incented to switch carriers based on the existence (or lack thereof) of a number portability charge. This incentive would not only provide certain carriers with a competitive advantage, but it could potentially interfere with a carrier's ability to earn a normal return. Therefore, the Commission must require that all number portability costs be aggregated and must mandate a uniform number portability charge that would be levied by all carriers. True competitive neutrality requires that costs be both allocated and recovered in a competitively neutral manner.

F. NUMBER PORTABILITY CHARGES SHOULD BE JURISDICTIONALLY TRANSPARENT

Congress gave the Commission explicit authority to ensure that number portability costs are borne on a competitively neutral basis by all carriers. Based on this explicit congressional mandate, the Commission has sole jurisdiction over the development of a competitively neutral number portability cost recovery mechanism. As such, the Commission can develop a single charge that is jurisdictionally transparent and that recovers total number portability costs. Total costs and revenues for number portability would be uniquely identified and captured so that only a federally mandated charge by

each carrier would be needed. In either event, the Commission has sole discretion over recovery of number portability costs. A single end-user charge to recover number portability costs is the simplest and most competitively neutral method for recovering number portability costs.

**G. ADVANTAGES OF THE EAL/END-USER CHARGE APPROACH**

Numerous advantages are associated with the EAL/End-User Charge approach, including:

- An explicit, uniform, mandatory, end-user charge levied by all carriers will assure competitive neutrality since all carriers will be required to charge their customers a uniform amount based on the appropriate number of EALs. This approach meets the Commission's objective that a purchasing decision not be influenced by charges associated with number portability and that no carrier be placed at a competitive disadvantage as a result of number portability costs.
- Dividing number portability costs by the total number of nationwide EALs will minimize the cost to all end users while assuring that carriers and LNPA(s) recover their costs.
- A federally mandated end-user charge calculated in this method is simple and easy to administer. Further, a federal charge avoids the complexity and inherent disagreements that exist when costs must be jurisdictionally separated.
- The end-user charge will be offset by price decreases presumably resulting from increased competition.
- The end-user approach requires those directly benefiting from number portability, as well as those with the potential to benefit from number portability, to pay for this specific capability and for the overall benefits that national number portability brings to telecommunications competition.

In summary, this approach meets the Commission's chosen competitive neutrality test (as well as any other), is straight forward and simple to administer, and is consistent

with the FCC's intentions of mandating a federal number portability solution.

**H. RECOVERY OF NUMBER PORTABILITY COSTS IN ACCESS OR INTERCONNECTION RATES IS NOT NECESSARY OR APPROPRIATE UNDER SBC'S APPROACH**

Under the Act, number portability costs must be borne by all telecommunications carriers on a competitively neutral basis. LECs, CLECs and ILECs, IXC's and CMRS providers all have number portability costs. As such, it is unreasonable and inappropriate for carriers to raise the rates of services it provides to other carriers to recover its own number portability costs. This includes access rates charged to IXC's as well as rates charged as a result of interconnection agreements reached between competing LECs and CMRS providers. Number portability costs must be recovered from each carrier's end-user customers. It is the only competitively neutral means of recovering these costs consistent with Congress' principles.

In the NPRM, the Commission asks for comment on whether certain number portability costs should be placed in a new or existing price cap basket. Number portability costs should not be recovered through increased access charges and should not be placed in any price cap basket. As such, SBC will not address the mechanical merits (or lack thereof) of incorporation of number portability costs into price caps through exogenous changes or through a new number portability rate element.

**III. CONCLUSION**

Section 251(e)(2) requires that "the cost of establishing telecommunications . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." As the Commission has pointed out, most parties generally contend that all telecommunications carriers and their customers

should bear the cost of number portability. This is the correct conclusion: Had Congress intended anything less than “all” telecommunications carriers to fund number portability, it could have narrowed the contributing class through specific legislation.

The proper, competitively neutral allocation of number portability costs should be based upon nationwide “elemental access lines” and recovery through a cost fund linked to a mandatory, averaged, and uniform end-user charge. This approach takes into account the various telecommunications product submarkets and customer-perceived uses of the local exchange line associated with the potentially ported number by dividing it into presubscribed “sub-elements.” To enable telecommunications carriers to recover their number portability costs on a competitively neutral basis, as well, all nationwide Type 1 and Type 2 number portability costs should be captured in a cost fund and divided by the national total number of EALs to determine an EAL charge per end user for each service. The resulting end-user charge should be federally mandated and assessed by all carriers on a uniform, mandatory, monthly basis to all end-user customers. Revenues from the charge should be collected by the carriers, returned to the fund, and disbursed to all carriers on the basis of reported and validated costs.

SBC respectfully urges that the Commission adopt its methodologies of allocation and cost recovery.

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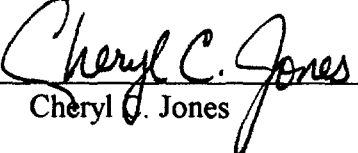
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CERTIFICATE OF SERVICE

I, Cheryl C. Jones, hereby certify that copies of COMMENTS OF SBC COMMUNICATIONS INC. TO FURTHER NOTICE OF PROPOSED RULEMAKING IN CC Docket 95-116, have been served by first class United States mail, postage prepaid, on the parties listed on the attached.

  
Cheryl C. Jones

August 16, 1996